IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos. 4205 to 4331 of 1999
with
CIVIL APPLICATION No.15554/99
and
CIVIL APPLICATIONS NOS. 7520 to 7645 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MANKABHAI MADHABHAI PATEL

Appearance:
MR SN SHELAT, ld.Advocate General with MR ND GOHIL, ld.AGP for the appellants.
MR JM PATEL, MR BG PATEL and MR CL SONI for respondents-claimants.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 19/04/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

This group of 127 First Appeals filed by the State of Gujarat under Sec.54 of the Land Acquisition Act read with Sec.96 of C.P.C. is directed against the common judgment and order dated 18th March 1998 passed by the Assistant Judge, Sabarkantha, Himmatnagar whereby he has decided Land Reference Cases No.1243/87 to 1268/87 (26), 1286/87 to 1287 (2), 1289/87 (1), 1294/87 to 1390/87 (97) and 1394/87 (1) i.e. 127 Land Reference Cases in all under Sec.18 of the Land Acquisition Act.

2. The lands of the claimants situated in the sim of village Nakod, Taluka Idar, Dist.Sabarkantha (Himmatnagar) were sought to be acquired for Dharoi Irrigation Project. For this purpose, three notifications under Sec.4 were issued on 19th Aug.1971, 25th Oct.1973 and 6th Dec.1973. The Land Acquisition Cases for the said Dharoi Project on the basis of the aforesaid three notifications under Sec.4 were registered at Nos.LAQ 54/71, 87/73 and 88/73. In all these three Land Acquisition Cases, three different awards were passed by the Land Acquisition Officer on the same date, i.e. 10th June 1974.

3. So far as the further proceedings after the award dt.10.6.74 in L.A. Case No.54/71 are concerned, i.e. proceedings under Sec.18 for reference, the appellants and the respondents-claimants are at serious dispute inasmuch as the case of the appellants is that the references were sought by the respondents-claimants on 21st Oct.1983 and the references were rejected on 18th March 1984. The case of the claimants is that they did not move any application on 21.10.83 for reference and in fact the claimants had moved applications seeking reference under Sec.18 of the Act way back on 18th July 1974 and those applications remained pending and were forwarded to the Reference Court as late as on 5th Dec.1987 and on that basis the references have been decided now by the present impugned common judgment and order in favour of the claimants. This common judgment and order which has been passed in the references made in the year 1987 has been made the subject matter of challenge in these appeals mainly on the grounds that whereas the applications for reference under Sec.18 as had been filed by the claimants on 21st Oct.1983 had already been rejected on 18th March 1984, there was no question of entertaining the applications under Sec.18

again in 1987 and to decide the references once again on the basis of the applications dated 18th July 1974 which are said to have been forwarded on 5th Dec.1987 and further that the claimants had, as a matter of fact, agreed to the terms and it was a case of consent award which had been passed in the prescribed Form. The appellants' case is that the whole confusion has been created because of wrong mention of the Numbers of the Land Acquisition Case No.14/71 with regard to village Bhanpur of Taluka Idar in which the notification under Sec.4 had been issued on 1st July 1971, the award had been passed on 18th May 1972 and in the applications moved in the year 1983 which were rejected in 1984, the present claimants had mentioned the Number of Bhanpur case, i.e. 14/74 on the top of the application as well as in the application for condonation of delay while the contents of such documents were those pertaining to Land Acquisition Cases of village Nakod. It has also been pointed out that on the basis of the award dated 10th June 1974 passed in Land Acquisition Case No.54/71, the references under Sec.18 as were entertained in the year 1987, i.e. Land Reference Cases No.1243/87 to 1268/87, 1286/97 to 1287/97, 1289/87, 1294/87 to 1390/87 and 1394/87, the main reference being 1337/87 have been decided by the impugned common judgment and order which is the subject matter of challenge in the present First Appeals. The respondent-claimants have also disputed the case of the appellants that it was a case of consent award.

4. On behalf of the appellants, 127 Civil Application No.15554/99 and Civil Applications Nos.7520 to 7645 of 2000 have also been moved in each of these appeals for producing additional evidence. When the said applications for additional evidence had come up before this Court, it was directed that the said applications shall be heard at the time of the arguments in the main cases when the main matters are heard. The main matters were heard for some time by us on 12th April 2001 and on that day, looking to the question about limitation etc. involved in these cases, we wanted to peruse the Inward and Outward Registers of the office of the Land Acquisition Officer for the years 1974, 1983, and 1987. For that purpose, the time was sought by the learned Advocate General and we posted the matters for further hearing today.

5. Learned Advocate General has submitted that the Registers of 1974 are not traceable, but the Registers of 1983, 1984 and 1987 are available.

6. We have looked into the Inward Register of 1983 as was produced before us. We have heard learned Counsel for both the sides. It appears that in the facts of the present case, the primary evidence was available and yet such primary evidence was not produced and instead, the Reference Court proceeded on the basis of the secondary evidence. It is also clear that the controversy is required to be decided as to whether the applications as are alleged to have been made in the year 1974 by the claimants could be decided in the present references of the year 1987 in which the impugned common judgment and order has been passed or in fact the applications had been made by the claimants in the year 1983 which had been decided and rejected in the year 1984 as argued by the learned Counsel for the appellants. The case of the appellant is that in view of the rejection of the references under Sec.18 in the year 1984 with regard to the same award, there was no question of any reference under Sec.18 being entertained and decided again on the basis of the alleged applications which had been moved in year 1974 whereas the case of the respondents claimants is that the matters which were decided in the year 1984 pertained to the village Bhanpur and not to the village Nakod. Prima facie, it appears that these aspects have been decided in the impugned order in absence of the primary evidence of contemparaneous nature and the controversy about the consent award has also met the same fate.

7. All the learned Counsel representing the appellants and claimants have very candidly given their consent coupled with the request that all these matters be remanded back for effective adjudication of the entire case and controversies between the parties including the question of consent award.

8. In the facts and circumstances of this case as narrated above, we find it to be a fit case in which the matters are required to be remanded back to the Reference Court. It will be open for both the sides to lead any further evidence oral or documentary and the Reference Court shall decide these references again after taking into consideration the entire evidence i.e. the evidence already recorded and the further evidence which may be tendered now by the parties. Therefore, the impugned common judgment and order as has been passed in these matters and which is challenged in these appeals is hereby set aside. The trial Court shall proceed with the remanded proceedings in accordance with law after giving full opportunity to both the sides and taking any further evidence oral and/or documentary or in any form which may

be adduced by the parties. Therefore, without expressing any opinion on the merits of the case of either side, all these cases are remanded back to the Reference Court for decision afresh in accordance with law read with this order but, nothing said or observed in this order shall cause any prejudice to the case of the either side on the merits of the case. The Advocates on behalf of the appellants as well as the respondents-claimants have agreed for reasons of expediency and rightly so that both the sides shall remain present before the concerned Reference Court either in person or through their respective Advocates/representatives on 18th June 2001 and therefore, the Reference Court is not required to issue the notices to the parties for the appearance on 18th June 2001. All these appeals are allowed as above with no order as to costs.

9. In view of the order as above passed in these First Appeals, no orders are required to be passed in the Civil Applications Nos.15554/99 and 7520 to 7645 of 2000 for additional evidence. All these 127 Civil Applications for additional evidence are hereby disposed of accordingly.

10. The record and proceedings shall be sent back to the concerned Court immediately.

19th April 2001 (M.R. Calla, J.)

(D.H.Waghela, J.)
Sreeram.